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DECISION



Adell

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

21479

FILE: B-205407

DATE: April 6, 1982

MATTER OF: Cooperative Forest Workers

DIGEST:

1. Protest that Forest Service entered into unauthorized personal services contract is denied since agency has specific statutory authority to employ persons or organizations on a temporary basis by contract or otherwise and funds have been currently appropriated for this purpose.
2. Solicitation provision establishing rules of conduct for contractor's employees affected bidders equally and did not constitute evidence that Forest Service would unfairly evaluate protester's bid regardless of Forest Service's reason for specifying rules.

Cooperative Forest Workers (Cooperative) protests the issuance of invitation for bids (IFB) No. R6-10-82-1 by the Department of Agriculture, Forest Service, Rogue River National Forest (Forest Service), for "lifting tree seedlings" from the Medford Oregon Forest Nursery. Award was made, notwithstanding Cooperative's protest, to SIS-Q Reforestation, Inc., after the Forest Service made a determination that if award was not made "substantial resource damage to existing planting contracts" and loss of seedlings would occur.

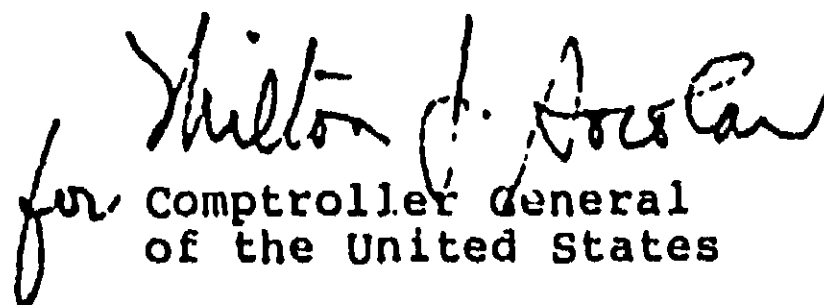
It is Cooperative's position that a contract based on certain of the IFB's specifications would create a proscribed personal services contract. In addition, Cooperative alleges that the Forest Service has a bias against Cooperative. We are not persuaded by Cooperative's arguments and, therefore, the protest is denied.

Under section 706(a) of the Organic Act of 1944 (7 U.S.C. § 2225 (1976)) the Department of Agriculture has authority to employ persons or organizations on a temporary basis by contract or otherwise so long as provision is made in the applicable appropriation and the cost does not exceed the limitations prescribed in the appropriation. For the current fiscal year, funds have been appropriated for the Forest Service specifically for employment pursuant to section 706(a) of the Organic Act of 1944. Act of December 23, 1981, Pub. L. No. 97-100, 95 Stat. 1405, 1406. Accordingly, even if we assume the proposed contract is for personal services, the contract is authorized by law. See Multinational Agribusiness Systems Incorporated, B-201447, June 15, 1981, 81-1 CPD 482.

Cooperative also alleges that the Forest Service has a bias against Cooperative. In support of the contention, Cooperative points to the Forest Service's explanation of why it felt it necessary to include a specification that essentially listed rules of conduct for the contractor's employees. The Forest Service explains that it added this specification as a result of its experience last year, under a lifting contract, with a subcontractor's (Cooperative) employees who "did the very things the specification prohibits."

It is the responsibility of the protester to present evidence sufficient to affirmatively establish its allegation. See Westvold & Associates, B-201032, May 6, 1981, 81-1 CPD 354. The specification, one clearly concerned with the conduct of the contractor's employees, affected bidders equally and should not have prevented any prospective bidder from submitting a bid regardless of the Forest Service's reason for specifying these rules. Consequently, we reject Cooperative's suggestion that the presence of these rules necessarily meant that the Forest Service would unfairly evaluate Cooperative's bid for the work.

Cooperative's protest is denied.


for Comptroller General
of the United States